

BEFORE THE FEDERAL ELECTION COMMISSION 2007 NOV 12 P 5: 16

In the Matter of

Service Employees International Union
Political Campaign Committee
and Patricia A. Ford, as treasurer

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CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

The Commission found reason to believe that the Service Employees International Union Political Campaign Committee ("SEIU COPE") and Patricia A. Ford, as treasurer (hereinafter and collectively, "Respondents") violated 2 U.S.C. §§ 432(b)(2) and 434(b), and 11 C.F.R. § 102.6(c)(1).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission for the purpose of resolving the matters set forth herein without resorting to costly and time-consuming litigation.

IV. The pertinent facts in this matter are as follows:

1. SEIU COPE is a political committee within the meaning of 2 U.S.C. § 431(4) and is the separate segregated fund of the Service Employees International Union ("SEIU") within the meaning of 2 U.S.C. § 441b(b)(2)(C) and 11 C.F.R. § 114.5. Its principal offices are located at 1313 L Street, N.W., Washington, D.C., 20005. At all times relevant to this matter, SEIU COPE was registered with the Commission as a political committee pursuant to 2 U.S.C. § 433.

2. Patricia A. Ford is the treasurer of SEIU COPE.

3. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits labor organizations from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a). However, it permits labor organizations to establish and administer separate segregated funds for political purposes and to solicit contributions to those funds from members and their families. 2 U.S.C. § 441b(b)(2)(C) and (4)(A)(ii).

4. A "collecting agent" is an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related. 11 C.F.R. § 102.6(b)(1). The connected organization of a separate segregated fund may act as its collecting agent. 11 C.F.R. § 102.6(b)(1)(ii). A parent, subsidiary, branch, division, department, or local unit of the connected organization or the separate segregated fund may act as collecting agent for the separate segregated fund. 11 C.F.R. § 102.6(b)(1)(iii).

5. Pursuant to 2 U.S.C. § 432(b)(2)(A) and 11 C.F.R. § 102.8(b)(1), every person who receives a contribution of \$50 or less for a political committee that is not an authorized committee of a candidate shall forward such contribution to the treasurer of the committee within 30 days of receipt. Additionally, every person who receives a contribution in excess of \$50 for a

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political committee that is not an authorized committee of a candidate must forward the contribution to the treasurer within 10 days of receipt, along with the name and address of the contributor and the date of receipt of the contribution. 2 U.S.C. § 432(b)(2)(B) and 11 C.F.R. § 102.8(b)(2).

6. A collecting agent must transmit to the treasurer of a separate segregated fund for which it collects contributions the full amount of each contribution collected within 10 days of receipt, in the case of contributions of more than \$50, or 30 days of receipt, in the case of contributions of \$50 or less, pursuant to 11 C.F.R. § 102.8(b). 11 C.F.R. § 102.6(c)(4).

7. For purposes of making transmittals of contributions received in forms other than checks made payable to the separate segregated fund, the collecting agent must either: 1) set up a transmittal account to be used solely for the deposit and transmittal of funds collected on behalf of the separate segregated fund; or 2) deposit such contributions into the agent's treasury account, keeping separate records; or 3) deposit them into an account used only for State and local election activity. 11 C.F.R. § 102.6(c)(4)(ii).

8. A separate segregated fund for which funds are being collected by a collecting agent is responsible for ensuring that its collecting agent complies with the applicable recordkeeping, reporting and transmittal requirements of the Commission's regulations. 11 C.F.R. § 102.6(c)(1).

9. Political committees (other than authorized committees of candidates) are required to report to the Commission, for the reporting period and the calendar year, the total amount of all receipts, 2 U.S.C. § 434(b)(2), and, *inter alia*, the total amount of contributions received from persons other than political committees, 2 U.S.C. § 434(b)(2)(A).

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10. Funds transmitted by collecting agents are to be reported as contributions, not as transfers from the collecting agent. 11 C.F.R. § 102.6(c)(7).

11. New York's Health and Human Service Union 1199/SEIU, AFL-CIO, a/k/a Local 1199NY, Service Employees International Union, f/k/a 1199, the National Health and Human Service Employees Union ("1199"), is a labor organization within the meaning of 2 U.S.C. § 441b(b)(1). Its principal offices are located at 310 W. 43rd Street, New York, New York, 10036. Pursuant to a partnership/affiliation agreement effective April 1, 1998, as amended effective January 1, 2000, and a charter granted April 1, 1998, 1199 is both a national affiliate and a local union of the SEIU. Prior to April 1, 1998, 1199 was an independent union.

12. At all times relevant hereto, 1199 afforded its members the opportunity to make contributions for "political action" by means of payroll deduction.

13. Beginning prior to its affiliation with SEIU and continuing through September 8, 1999, 1199 maintained three separate "Political Action" accounts at Amalgamated Bank of New York. One, known as the "Political Action Fund," was the account into which 1199 members' donations for "Political Action" were deposited. This account has also been referred to in the course of this matter as a "collecting agent" account. One was the account of 1199's own separate segregated fund registered with the Commission, the Local 1199 Federal Political Action Fund ("Local 1199 PAC"). And one was 1199's non-Federal account, which was known as the "New York State Political Action Fund."

14. Effective April 1, 1998, upon affiliation of 1199 and SEIU, 1199 became eligible to act as a collecting agent for SEIU COPE.

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15. The Commission has developed information indicating that both prior to and after its affiliation with SEIU, it was the practice of 1199 to transfer funds from the "Political Action Fund" or "collecting agent" account to either Local 1199 PAC or the New York State Political Action Fund (or, after affiliation, SEIU COPE) at the direction of the Executive Council of 1199, on an "as-needed" basis without regard to how recently the funds had been received. Respondents contend they have no independent information about this statement.

16. On June 5, 1998, \$770,714 in unitemized contributions, made through employee payroll deduction, were transmitted from the "Political Action Fund," or "collecting agent," account to SEIU COPE. For purposes of settlement only, Respondents stipulate that none of these funds were transmitted to SEIU COPE within 30 days of receipt.

17. On July 20, 1998, Respondents filed their 1998 July Monthly Report. On that report, they reported the \$770,714 transaction described immediately above as a transfer from "SEIU Local 1199."

18. On March 16, 1999, \$606,759 in unitemized contributions, made through employee payroll deduction, were transmitted from the "Political Action Fund," or "collecting agent," account to SEIU COPE. For purposes of settlement only, Respondents stipulate that none of these funds were transmitted to SEIU COPE within 30 days of receipt.

19. On April 20, 1999, Respondents filed their 1999 April Monthly Report. On that report, they reported \$556,759 of the transaction described immediately above as a transfer from "SEIU Local 1199," and the remaining \$50,000 as unitemized contributions.

20. Respondents contend that they had no knowledge of the existence of 1199's "collecting agent" account or of 1199's practices with respect thereto. They also contend that

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they reported the June 5, 1998 transaction and \$556,759 of the March 16, 1999 transaction as "transfers from affiliated committees" because they assumed that the money had come from a Federal political committee, and that that assumption was based on the language of the 1199-SEIU affiliation agreement, under which 1199 was to transfer funds from its "political committee." However, because the responsible individuals are no longer employed by SEIU, Respondents are unable to explain why they reported the remaining \$50,000 of the March 16, 1999 transaction as unitemized contributions, which would be consistent with knowledge that the funds had originated in a "collecting agent" account.

21. In addition to the reporting requirements described above, political committees that are not the authorized committees of candidates for Federal office must report, for the reporting period and the calendar year, the total amount of all transfers to affiliated committees, 2 U.S.C. § 434(b)(4)(C), and the name and address of each affiliated committee to which a transfer is made by the reporting committee during the reporting period, together with the dates and amounts of such transfers. 2 U.S.C. § 434(b)(5)(C).

22. "Affiliated committees" to which political committees may make unlimited transfers need not themselves be political committees under the Act. *See* 11 C.F.R. § 102.6(a)(1).

23. On October 20, 1999, SEIU COPE disbursed \$606,759 either directly or indirectly to 1199's non-Federal account. By this disbursement, SEIU COPE intended to return to 1199 the funds 1199 had transmitted to it in the March 16, 1999 transaction. Although the funds were from permissible sources and SEIU COPE could legally have retained them, SEIU COPE contends it wished to return the money because it learned, after Commission inquiries, that the

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funds did not originate in 1199's "political committee" and it regarded the funds as therefore inconsistent with the SEIU-1199 affiliation agreement.

24. On December 20, 1999, Respondents filed an amended 1999 November Monthly Report. Instead of reporting a \$606,759 transfer to 1199's non-Federal account, they reported an itemized "negative receipt" of \$556,759 from 1199, and consistent therewith, reduced the amount of unitemized contributions received by \$50,000 from the amount reported on their original 1999 November Monthly Report. In so doing, they also incorrectly stated the year-to-date receipt and disbursement figures on their amended 1999 November Monthly Report.

25. Political committees are required to report to the Commission both the total amounts of all transfers received from affiliated committees, and the identification of the transferring committees along with dates and amounts of particular transfers. 2 U.S.C. § 434(b)(2)(F) and (3)(D).

26. "Identification" means, in the case of a person other than a natural person, the full name and address of such person. 2 U.S.C. § 431(13).

27. 1199 Service Employees International Union Federal Political Action Fund ("SEIU 1199 PAC") is a political committee within the meaning of 2 U.S.C. § 431(4) and is a separate segregated fund of 1199 within the meaning of 2 U.S.C. § 441b(b)(2)(C) and 11 C.F.R. § 114.5. Pursuant to 11 C.F.R. § 110.3(a)(2)(ii), it is affiliated with SEIU COPE. Its principal offices are located at 330 W. 42nd Street, New York, New York, 10036. SEIU 1199 PAC registered with the Commission on September 1, 1999.

28. 1199 & 32BJ/144 Service Employees International Union Homecare Political Action Committee ("Homecare PAC") is a political committee within the meaning of 2 U.S.C. § 431(4).

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It registered with the Commission on April 6, 1999. Pursuant to 11 C.F.R. § 110.3(a)(2)(ii), it is affiliated with SEIU COPE. At all times relevant hereto, Homecare PAC has also been a separate segregated fund of 1199 within the meaning of 2 U.S.C. § 441b(b)(2)(C) and 11 C.F.R. § 114.5. Its principal offices are located at 330 W.42nd Street, New York, New York, 10036.

29. In 2000, SEIU 1199 PAC transferred the following amounts to SEIU COPE on the following dates: \$706,759 on January 14; \$506,252 on April 7; \$114,771 on May 2; \$168,856 on June 2; \$151,268 on July 6; \$157,062 on August 2; \$173,500 on September 6; \$108,201 on October 4; \$152,387 on November 2; and \$173,358 on December 7.

30. In 2000, Homecare PAC transferred the following amounts to SEIU COPE on the following dates: \$42,215 on April 7; \$9,013 on May 2; \$24,206 on July 6; \$9,227 on August 2; \$10,390 on September 6; \$8,719 on October 4; \$8,785 on November 2; and \$12,048 on December 7.

31. Respondents reported the transfers from SEIU 1199 PAC and Homecare PAC on April 7, 2000, May 2, 2000, July 6, 2000, August 2, 2000, September 6, 2000, October 4, 2000, November 2, 2000, and December 7, 2000, as single transfers that combined the amounts SEIU COPE received from each committee, rather than as separate transfers received from each committee. Respondents contend they believed at the time of receipt that the transfers from 1199 to SEIU COPE were exclusively from SEIU 1199 PAC. They further contend that they based this belief on the language of the original affiliation agreement between SEIU and 1199, as well as the subsequent affiliation agreement, which provided that 1199 would transfer funds from its "political committee" to SEIU COPE, and on the fact that they typically received one lump wire transfer per month from 1199. Further, although Homecare PAC was registered with and

reporting to the Commission, Respondents contend that they were unaware of the existence of Homecare PAC.

32. Further, Respondents reported the transfers referred to in the immediately preceding paragraph, as well as the transfers SEIU COPE received from SEIU 1199 PAC on January 14, 2000 and June 2, 2000, as being received from "SEIU Local 1199" at the local union's address rather than as being from the committees at the committees' address.

33. On December 13, 2000, Respondents filed their 2000 Post-General Report. In addition to mistakenly combining the transfers SEIU COPE received from SEIU 1199 PAC and Homecare PAC on November 2, 2000, this report overstated the amount received from "SEIU Local 1199" by \$3,250, overstated the total amount of transfers received from affiliated committees by \$3,250, and understated the amount of unitemized contributions received by \$3,250. Respondents have represented to the Commission that the \$3,250 in fact corresponded to the amount of unitemized contributions they received during that reporting period from members of SEIU Local 1001 in St. Louis, Missouri.

34. On January 31, 2001, Respondents filed their 2000 Year End Report. In addition to mistakenly combining the transfers SEIU COPE received from SEIU 1199 PAC and Homecare PAC on December 7, 2000, this report understated the amount received from "SEIU Local 1199" by \$3,250, understated the amount of transfers received from affiliated committees by \$3,250, and overstated the amount of unitemized contributions received by \$3,250. These inaccurate statements were made intentionally, in an attempt to correct the errors referred to in the immediately preceding paragraph.

V. 1. Respondents violated 2 U.S.C. § 432(b)(2) by failing to ensure that 1199, acting as a collecting agent, forwarded in a timely manner the \$770,714 it forwarded on June 5, 1998.

2. Respondents violated 2 U.S.C. § 432(b)(2) by failing to ensure that 1199, acting as a collecting agent, forwarded in a timely manner the \$606,759 it forwarded on March 16, 1999.

3. Respondents violated 2 U.S.C. § 434(b) by mistakenly reporting \$770,714 received from 1199, as a collecting agent, on June 5, 1998, as a transfer from an affiliated committee rather than as unitemized contributions.

4. Respondents violated 2 U.S.C. § 434(b) by mistakenly reporting \$556,759 of the amount received from 1199, as a collecting agent, on March 16, 1999, as a transfer from an affiliated committee rather than as unitemized contributions.

5. Respondents violated 2 U.S.C. § 434(b) by mistakenly reporting their disbursement of \$606,759 on October 20, 1999 as a "negative receipt" instead of properly identifying the recipient or recipients of the disbursement and by correspondingly misstating the year-to-date receipts and disbursements reported on their amended 1999 November Monthly Report.

6. Respondents violated 2 U.S.C. § 434(b) by mistakenly reporting \$124,603 in transfers from Homecare PAC in 2000 as subsumed within larger transfers that were made by SEIU 1199 PAC.

7. Respondents violated 2 U.S.C. § 434(b) by mistakenly reporting \$2,537,017 in transfers made by either Homecare PAC or SEIU 1199 PAC in 2000 as being made by 1199 at 1199's address rather than by the committees at the committees' address.

8. Respondents violated 2 U.S.C. § 434(b) by overstating transfers received from "SEIU Local 1199" and the total amount of transfers received from affiliated committees on their 2000

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Post-General Report by \$3,250, and by understating the amount of unitemized contributions received on the same report by the same amount. Respondents further violated 2 U.S.C. § 434(b) by understating transfers received from "SEIU Local 1199" and the total amount of transfers received from affiliated committees on their 2000 Year End Report by \$3,250, and by overstating the amount of unitemized contributions received on the same report by the same amount.

9. The Commission has made no findings that these violations were knowing and willful.

VI. Respondents will cease and desist from violating 2 U.S.C. §§ 432(b)(2) and 434(b).

VII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of seventy-five thousand dollars (\$75,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII. To the extent they have not already done so, Respondents will amend their disclosure reports as necessary to address the violations of 2 U.S.C. § 434(b) described in this agreement. They will also amend other reports not specifically mentioned in this agreement to ensure that all year-to-date totals in such reports are accurate.

IX. The Chief Financial Officer of SEIU shall attend the next FEC Regional Conference or FEC Conference for Labor Organizations and their PACs, whichever is closer in time to the date this Agreement becomes effective, for which space is available.

X. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

XI. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XII. 1. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission, with the exception of the requirements contained in Paragraph IX.

2. (A). If the FEC Conference described in Paragraph IX is held within 30 days of the date this agreement becomes effective, and registration is open and available for such conference, then the Chief Financial Officer of SEIU shall register for and attend such conference.

(B). If the FEC Conference described in Paragraph IX is held after 30 days from the date this agreement becomes effective, but registration for such conference is open and available within 30 days from the date this agreement becomes effective, then the Chief Financial Officer of SEIU shall register for such conference not later than (i) 30 days from the date this agreement becomes effective, or (ii) the date registration for the conference closes, whichever is earlier.

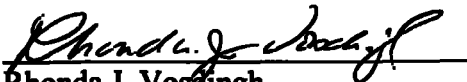
(C). If, during the 30-day period following the date on which this agreement becomes effective, no registration is open or available for an FEC conference described in Paragraph IX, then the Chief Financial Officer of SEIU shall register for the next available such conference within seven days of the date on which registration opens for the conference.

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XIII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

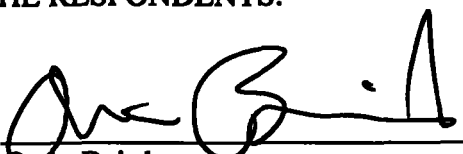
FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: 
Rhonda J. Vossingh
Associate General Counsel
for Enforcement

12/5/02
Date

FOR THE RESPONDENTS:

BY: 
Orrin Baird
Associate General Counsel

11/12/02
Date